

APPEAL NO. 021698
FILED AUGUST 20, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 12, 2002, and continued until May 20, 2002. The hearing officer determined that respondent 3's (claimant) compensable injury of _____, extended to and included disc desiccation and bulging discs; that the claimant did not sustain a new injury on _____; that the claimant did not give timely notice of his _____, injury and had no good cause for failing to do so; that the claimant did not have good cause for his failure to appear at the scheduled March 12, 2002, CCH; and that, likewise, the appellant (carrier 1) (the carrier who was liable for the claimant's _____, compensable injury), did not have good cause for its failure to appear.

Carrier 1 appeals, arguing that respondent 1 (carrier 2) (the carrier for the alleged _____, injury), failed to raise sole cause as an issue; that the determination that the claimant did not sustain a new injury on _____, is against the great weight and preponderance of the evidence; and that it had good cause due to a series of conflicts of interest of its prior attorneys for failing to appear. Carrier 1 also argues that the hearing officer abused his discretion by failing to grant a continuance to carrier 1. Respondent 2 (subclaimant), who is the claimant's surgeon, responds that the decision on the appealed issues was correct. Neither carrier 2 nor the claimant has responded.

DECISION

Affirmed.

The hearing officer has laid out the facts of this case. On the matter of injury, certainly there is evidence that would have supported the contrary inference that the claimant sustained a new injury or at least an aggravation on _____. However, as the hearing officer points out, the doctor for carrier 2 also formulated his theory of how the medical treatment for the prior injury played a role in causing development of the condition leading to surgery. Consequently, we cannot say that the hearing officer's decision is so against the great weight of the evidence as to be manifestly unfair or unjust.

Any failure to grant a continuance was obviated by the fact that a subsequent CCH was held, with a representative for carrier 1 in attendance, and evidence was taken on the merits. However, we do not agree that the hearing officer abused his discretion by finding that carrier 1 was without good cause for the failure to appear at the March session of the CCH. A party's representatives' actions are attributable to that party. The hearing officer apparently believed that the attorneys for carrier 1 should

have been able to ascertain the possibility of a conflict of interest much earlier than shortly before the March CCH. There is support for his belief in the record.

For the reasons stated in the opinion, we affirm the hearing officer's decision on the appealed determinations.

The true corporate name of carrier 1 is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier**, and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
T.P.C.I.G.A.
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

The true corporate name of carrier 2 is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge